IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 22ND OCTOBER 2007 / 30TH ASWINA 1929

Bail Appl..No. 6381 of 2007()

CRIME NO.370/07 OF OACHIRA POLICE STATION

: PETITIONERS/ACCUSED NOS. 2 & 31

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1. MUJEEB, S/O. RAJAN, AGED 27,
SHAKEENA MANZIL, VALAYIKKADU, OPPOSITE TO
MSM SCHOOL, KAYAMKULAM VILLAGE.

2. RATHEESH SATHYAN, S/O. SATHYAN,
AGED 26, PRABHA NIVAS, PADA-NORTH,
KARUNAGAPPALLY.

BY ADV. SRI. K.SIJU

RESPONDENTS: STATE

STATE OF KERALA, REPRESENTED BY
SUB INSPECTOR OF POLICE, OACHIRA POLICE STATION,
THROUGH PUBLIC PROSECUTOR, HIGH COURT OF KERALA.

BY PUBLIC PROSECUTOR SRI.JAI GEORGE

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 22/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

B.A.No.6381 of 2007

Dated this the 22nd day of October, 2007

ORDER

Application for anticipatory bail. Petitioners are accused 2 and 3. Altogether there are 4 accused persons. The crux of the allegation is that at about mid night when injured persons were proceeding on a motor cycle, that motor cycle was followed by a car in which the 4 accused persons were travelling. They picked up a quarrel with the motor cycle riders while they were moving, on the grievance that the motor cyclist had not given side to the car. The miscreants stopped the motor cycle. Went out of their car. They were armed with dangerous weapons including swords etc. They unleashed an attack on the motor cycle riders/the victims. Both the victims had suffered injuries. They were admitted in the hospital also. The crime was registered. The accused are alleged to have committed offences punishable, inter alia, under Section 308 I.P.C. The investigation is in progress. The petitioners, though not named in the F.I.R, have subsequently been arrayed as accused. They apprehend imminent arrest.

2. The learned counsel for the petitioners submits that the petitioners are innocent. In any view of the matter, the allegation

under Section 308 I.P.C is totally unjustified. In these circumstances the petitioner may be granted anticipatory bail, it is prayed.

3. The learned Public Prosecutor vehemently opposes the application. The learned Public Prosecutor points out that a reading of the F.I.R must reveal the nature of the cruel attack and the culpable acts indulged in by the petitioners. In any view of the matter, the petitioners are not entitled for the invocation of the extraordinary equitable discretion under Section 438 Cr.P.C. It is evident that they were armed with dangerous weapons and were proceeding in the dead of the night. On an inconsequential disputes, they had chosen to use such dangerous weapons against accused persons. In any view of the matter the petitioners may not be granted anticipatory bail, submits the learned Public Prosecutor.

4. On an anxious consideration of all the relevant inputs, I find the opposition by the learned Public Prosecutor to be absolutely justified. I am unable to find any features in this case which would justify the invocation of the extraordinary equitable discretion under Section 438 Cr.P.C. This, I agree with the learned Public Prosecutor, is a fit case where the petitioners must appear before the learned Magistrate having jurisdiction or the Investigating Officer and then seek bail in the regular and ordinary course.

5. This application is, in these circumstances, dismissed, but I may hasten to observe that if the petitioners surrender before the Investigating Officer or the learned Magistrate and apply for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously.

(R.BASANT, JUDGE)

rtr/-